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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,064	10/22/2003	Donald E. Weder	8404.012	6112

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/691,064

Applicant(s)

WEDER, DONALD E.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC §103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-12, and 14-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (EP 0791543 A2; 5<sup>th</sup> document listed under foreign patent's section of Applicant's 1449).

As to Claim 1, Weder et al. disclose a sleeve (Fig. 55) originally in the flattened condition and openable therefrom comprising upper and lower ends, first and second sides, first and second panels (col. 9 lines 5-11), the sleeve with a single portion at the lower end, the first side having a first angle which faces inwardly and is greater than 90 degrees and less than 180 degrees, a second side having a second angle which faces inwardly and is greater than 90 degrees and less than 180 degrees, the first and second angles and the single portion cooperating to define a portion of the sleeve; the sleeve generally tapered (Fig. 55) when in an opened condition and absent a gusset (Fig. 55) in the lower end when in the flattened condition. Not disclosed is the single portion being arcuate. The same Weder et al., however, discloses a single arcuate portion in the lower end (for example, Fig. 36). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. (Fig. 55) by

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making the single portion arcuate as disclosed by Weder et al. (Fig. 36) so as to meet consumer demand (for example, see col. 19 lines 44-50).

As to Claims 2 and 3, Weder et al. as modified by Weder et al. further disclose the first and second angles from 135 to 155 degrees (see Fig. 55).

As to Claims 5 and 6, Weder et al. as modified by Weder et al. further disclose a detachable upper portion and a detaching element that is perforations (Fig. 55).

As to Claim 7, Weder et al. as modified by Weder et al. further disclose the upper portion sized to substantially surround and enclose a floral grouping (Fig. 55).

As to Claim 8, Weder et al. as modified by Weder et al. further disclose a support assembly (for example, 62 of Figs. 1).

As to Claim 9, Weder et al. as modified by Weder et al. further disclose a skirt portion (Fig. 55).

As to Claim 10, Weder et al. as modified by Weder et al. further disclose a non-linear edge of the upper end (Fig. 55).

As to Claim 11, Weder discloses a sleeve (Fig. 55) originally in the flattened condition and openable therefrom comprising upper and lower ends, first and second sides, first and second panels (col. 9 lines 5-11), the sleeve with a single portion at the lower end, the first side having a first and second angles which faces inwardly and are greater than 110 degrees and less than 175 degrees, a second side having a third and fourth angles which faces inwardly and is greater than 110 degrees and less than 175 degrees, the first and second angles and the single portion cooperating to define a portion of the sleeve; the sleeve generally tapered (Fig. 55) when in an

opened condition and absent a gusset (Fig. 55) in the lower end when in the flattened condition. Not disclosed is the single portion being arcuate. The same Weder et al., however, discloses a single arcuate portion in the lower end (for example, Fig. 36). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. (Fig. 55) by making the single portion arcuate as disclosed by Weder et al. (Fig. 36) so as to meet consumer demand (for example, see col. 19 lines 44-50).

As to Claim 12, Weder et al. as modified by Weder et al. further disclose the first-fourth angles from 125 to 150 degrees (see Fig. 55).

As to Claims 14 and 15, Weder et al. as modified by Weder et al. further disclose a detachable upper portion and a detaching element that is perforations (Fig. 55).

As to Claim 16, Weder et al. as modified by Weder et al. further disclose the upper portion sized to substantially surround and enclose a floral grouping (Fig. 55).

As to Claim 17, Weder et al. as modified by Weder et al. further disclose a support assembly (for example, 62 of Figs. 1).

As to Claim 18, Weder et al. as modified by Weder et al. further disclose a skirt portion (Fig. 55).

As to Claim 19, Weder et al. as modified by Weder et al. further disclose a non-linear edge of the upper end (Fig. 55).

### ***Response to Arguments***

Applicant's arguments filed 22 December 2004 have been fully considered but they are not persuasive. The crux of Applicant's arguments are: (1) Examiner's motivation reasoning of

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“to meet consumer demand” is improper because there is always a desire ““to meet consumer demand”” (Remarks at page 9, 2<sup>nd</sup> para.); (2) Examiner’s assertion that the claims would be obvious because creation of a “variety of configurations” would be motivated by a “desire to meet consumer demand” does not provide reasonable suggestion of motivation to combine elements to arrive at the present invention (Remarks page 9, last para.); and (3) If Examiner has particular knowledge of the floral industry as to why one would combine elements to arrive at the instant invention, Applicant requests an affidavit disclosing this knowledge (Remarks page 9, 2<sup>nd</sup> to last para.).

As to arguments (1) and (2), Examiner considers the motivation of “to meet consumer demand” proper, here, because it is established that “patterns or images [of floral covers are] selected to promote sale of the floral grouping, or other item within the sleeve” (see Gilbert (‘368 A1) at page 3, lines 1-2); a “customer may be able to select the decorative cover [] or decorative collar [for floral groupings] from a variety of available decorative covers and decorative collars thereby providing the customer with a wide selection of colors, patterns, and graphic effects” (see Weder (‘459 A1) at para. 33); and, a pot cover can have improved appearance by “different colorations or personalization” (Charrin at page 2, lines 12-13; document GP on Applicant’s 1449). These three references explicitly disclose that color and graphics are varied in floral covers so as to promote sales or please the customer. It follows, that sales are promoted when consumers are pleased, *i.e.*, when consumer demand is met. Examiner considers the color or graphics of a floral cover analogous to the floral cover’s design, or shape, absent any disclosed critical purpose for the particular design, or shape. Both types of changes are primarily decorative design changes with the goal of promoting sales by meeting consumer demand.

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Also, it has been found that a change in the shape of a container “absent persuasive evidence that the particular configuration of the claimed container was significant” was obvious to one of ordinary skill in the art (MPEP 2144.04 IV B citing *In re Dailey*, 357 F.2d 669). Bolstering this holding is the patent to Valerius which discloses a decorative conversion kit for used containers where the design of the container is changed, *inter alia*, to promote sales (see abstract in English). In the instant application, Examiner considers the design, or shape, of the floral cover to be akin to that of Valerius although not a used container.

As to argument (3), Examiner does not allege any particular knowledge of the floral industry and, instead, relies on the arguments presented in the previous two paragraphs. Those arguments show that the motivation to combine of “to meet consumer demand” is proper.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

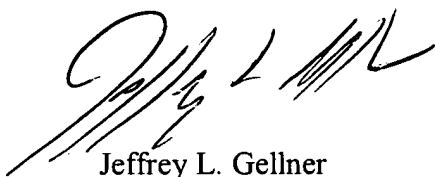
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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053 (after 4 April 2005 use: 571.272.6887). The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner